



Report to the Auburn City Council

Action Item
7
Agenda Item No.

City Manager's Approval

To: Honorable Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Date: December 3, 2012
Subject: Amendment of City Ordinance Limiting Liability – First Reading

The Issue

Shall the City Council adopt an Ordinance to update the City's Municipal Code by adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of tort liability for acts or omissions of City officers and employees?

Conclusions and Recommendations

Waive full reading and introduce an ordinance to add Section 10.23 to the Auburn Municipal Code regarding limitation of tort liability for acts or omissions of City officers and employees.

Background

Under Government Code section 815.6, a public entity may be liable for injury caused by its failure to discharge a "mandatory duty" imposed by an enactment designed to protect against that type of injury. This section would clarify that the provisions of the Code which establish standards of performance or obligations of City officers and employees are not intended to create a "mandatory duty" for purposes of tort liability.

Alternatives Available to Council; Implications of Alternatives

1. Adopt an Ordinance adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of liability.
2. Do not adopt an Ordinance adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of liability. This action could expose the City to liabilities which would otherwise be avoided by adopting this limiting language.

Fiscal Impact

The resources to prepare this ordinance and staff report are budgeted. To the extent this amendment limits the potential for tort suits against it, it may prevent significant liabilities and therefore have a beneficial fiscal impact.

Attachment - Ordinance No. TBD

c: Bob Richardson, City Manager
Andy Heath, Director of Administrative Services

ORDINANCE NO. 12-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN ADDING
SECTION 10.23 TO THE AUBURN MUNICIPAL CODE LIMITING TORT LIABILITY
FOR OMISSIONS OF OFFICERS OR EMPLOYEES.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS:

Section One: Code Amendment. Section 10.23 is hereby added to the
Auburn Municipal Code to read as follows:

10.23 Limitation on Liability

Any provision of this Code establishing performance
standards or establishing an obligation or duty to act or to
refrain from acting by any officer or employee shall not be
construed as creating a mandatory duty for the purposes of tort
liability if the officer or employee fails to perform a directed
obligation or duty.

Section Two: Effective Date. This Ordinance shall take effect thirty days
following its adoption as provided by Government Code Section 36937.

Section Three: Certification. The City Clerk shall certify to the passage
and adoption of this Ordinance and shall give notice of its adoption as required
by law. Pursuant to Government Code Section 36933, a summary of this
Ordinance may be published and posted in lieu of publication and posting of
the entire text.

Section Four: Severability. Should any provision, section, paragraph,
sentence or word of this Ordinance be rendered or declared invalid by any
court of competent jurisdiction or by reason of any preemptive legislation, the

1 remaining provisions, sections, paragraphs, sentences or words of thi
2 Ordinance shall remain in full force and effect.

3
4 Section Five: Construction. To the extent the provisions of the Auburn
5 Municipal Code as amended by this Ordinance are substantially the same as
6 the provisions of that Code as it read prior to the adoption of this Ordinance,
7 those provisions shall be construed as continuations of the prior provisions and
8 not as new enactments.

9
10 DATED: TBD

11 _____
12 Kevin Hanley, Mayor

13
14
15 ATTEST:

16 _____
17 Stephanie Snyder, City Clerk

18
19 I, Stephanie Snyder, City Clerk of the City of Auburn, hereby certify that
20 the foregoing ordinance was duly passed at a regular meeting of the City
21 Council of the City of Auburn held on the TBD day of January, 2013 by the
22 following vote on roll call:

23 Ayes:
24 Noes:
25 Absent:

26 _____
27 Stephanie Snyder, City Clerk